

2

Docket No. BTY-100C2

Serial No. 10/705,803

Remarks

Claims 1-11 are currently pending in this application and before the Examiner for consideration.

The Office Action states that a new oath or declaration of application is necessary to acknowledge a prior filed Japanese application. Reference to this application was an error on the Official Filing Receipt. This error was corrected in the corrected Official Filing Receipt, a copy of which is attached, which shows no claim to a prior Japanese application. Reconsideration of this matter is respectfully requested.

Claims 1 has been rejected under the judicially created doctrine of obviousness-type double patenting over applicant's own U.S. Patent No. 6,205,997. Submitted herewith is a terminal disclaimer citing that patent. Applicant therefore respectfully requests reconsideration and withdrawal of this rejection.

Claims 2-11 have been rejected under the judicially created doctrine of obvious-type double patenting over applicant's own U.S. Patent No. 6,205,997 ('997) in view of Dikeman. Dikeman describes an adjustable broiler for an oven. The Office Action states a person of ordinary skill in the art would have been able to modify the notched oven rack of '997 to incorporate the adjusting means of Dikeman to allow the rack to fit into various sized ovens. Claims 2-11 describe a unique oven rack with a notch in its periphery that allows flat items to be easily and safely removed from the rack. Making this rack adjustable allows the racks to be purchased separately from the oven allowing everyone to enjoy its benefits. The '997 patent has been addressed with a terminal disclaimer. Dikeman alone does not suggest or describe an adjustable notched rack. Reconsideration and withdrawal of the rejection is therefore respectfully requested.

3

Docket No. BTY-100C2
Serial No. 10/705,803

In view of the foregoing remarks, the applicant believes that the claims are now in condition for allowance and such action is respectfully requested.

Applicant invites the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

I authorize you to charge the amount of \$65.00 (small entity) to Deposit Account No. 19-0065.

Respectfully submitted,



Jean Kyle
Patent Attorney
Registration No. 36, 987
Phone No.: (406) 375-1317
Address : P.O. Box 2274
Hamilton, MT 59840-4274

Attachments: Updated Official Filing Receipt
Terminal Disclaimer